vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4500 OF 1995

Shri K.L. Kumar
C/o. Maharashtra Samyukta Kamgar
Union, 10 Suresh Chawl, Kokani Pada
Kurar Village, Malad, Bombay-97 ... Petitioner

V/s.

1. Shri V.P. Patil
Presiding Officer
First Labour Court
Bombay - 34

2. M/s.IDEAL ELEKTRO WERKE

3. M/s.DOWELL'S ELEKTRO WERKE
both having their address at
Gala No.68, Satuguru Estate
Off. Aarey Road, Goregaon (E)
Bombay - 63 ... Respondents

Ms.Yogita Tanawade h/f Aditya Chitale for Petitioner
Respondent No.1 - formal party
Mr.D.A. Athavale for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**
DATED: **OCTOBER 17, 2007**

JUDGMENT:

. By this petition, the petitioner has challenged the award of Labour Court rejecting his demand for reinstatement with continuity of service and full backwages. The Reference was dismissed on 19.5.1995.

2. The petitioner was employed with Respondent No.2 as a Technician for more than a year. It is the petitioner's case that when he was appointed by Respondent NO.2, his signatures were obtained on blank letterheads of Respondent No.2 and on blank vouchers and papers. According to the petitioner, his services were terminated w.e.f. 31.12.1987. He, therefore, raised an

industrial dispute and obtained a Reference for adjudication by the Labour Court. The dispute referred was one between the Respondent No.2 and the Petitioner and was registered as Reference (IDA) No.10 of 1988. The workman filed his statement of claim contending that his services had been terminated illegally and in contravention of the provisions of the Bombay Shops and Establishments Act. It was also pleaded that he had completed one year of continuous service and, therefore, was entitled to be paid retrenchment compensation before his services were terminated. No chargesheet had been issued to him.

3. In its written statement, Respondent No.2 contended that the petitioner was not a workman as defined under section 2(s) of the Industrial Disputes Act. It was also pleaded that the petitioner had been appointed on probation for six months and his services were terminated after the expiry of the period of probation. Evidence was led on behalf of both the parties. The petitioner tried to establish in his evidence that he was employed with Respondent No.2 as a technician and that he was employed with the sister concern of Respondent No.2 i.e. M/s.DOWELL ELEKTRO WERKE, Respondent No.2 herein from 14.1.1987. In his cross-examination, he has stated that from 1978 to 1987, he worked with two other companies. He has further stated that he has worked with DOWELL ELEKTRO WERKE (for

short, hereinafter referred to as "Dowell") for about six months and thereafter, his services were transferred to Ideal Elektro Werke, Respondent No.2 herein. The petitioner admitted his signature on his application for employment dated 7.3.1987. According to him, the name of Respondent No.2 company was changed from Dowell Elektro Werke to Ideal Elektro Werke and because of this he had been in continuous service as he had completed more than 240 days, considering the services that he rendered with Dowell and Ideal.

4. Respondent No.2 has led evidence of the Production Planning Engineer of Dowell. He has stated that he interviewed the petitioner for recruiting him in Respondent NO.2. He has admitted in his cross-examination that he was working exclusively for Dowell Elektro Werke and not for any other company. He has also stated that he was supervising the work of Respondent No.2. In para 7 of the cross-examination, this witness has admitted that he had put the word "Ideal" instead of "Dowell" in exhibit C8 which is the application for employment. This witness has admitted that the application for employment was made to Dowell. He has also admitted that the employee, i.e. the petitioner herein, was working with him in Dowell. He has also admitted that the petitioner was the only employee working with Respondent No.2. However, he has later denied that the petitioner worked with Dowell from

14.1.1987 to 9.6.1987 and was thereafter directed to work with Respondent No.2. The other witness examined on behalf of Respondent No.2 has also stated that Dowell had advertised the vacancy for the post of an Engineer in the newspapers and that the petitioner had applied pursuant to that advertisement. He has also admitted that instead of appointing him in Dowell, it was decided to appoint him as a supervisor in the sister concerns and not in Dowell. This witness has also admitted that the petitioner was the lone employee on the muster roll of Ideal i.e., Respondent No.2 herein.

5. After considering this evidence on record, the Labour Court has held that the petitioner was not entitled to any relief. The Labour Court was of the view that assuming the petitioner had worked with Dowell for an earlier period, Dowell was not party to the reference and, therefore, no relief could be granted to the petitioner against Dowell. The Labour Court, therefore, held that the service rendered by the petitioner in the sister concern cannot be combined with the service that he had rendered with Respondent No.2. The Labour Court, therefore, concluded that the workman was unable to establish that he had completed 240 days in service.

6. The learned advocate for the petitioner submits that Respondent No.2 is just a front for Respondent

No.3, as they are sister concerns. She submits that the very fact the respondent's witnesses have admitted that the petitioner was the only employee on the muster roll of Respondent No.2 indicates that the petitioner's employment with Respondent No.2 was merely to circumvent the labour laws. She submits that the petitioner had applied for employment with Dowell and the witness Rakesh Jugalkishore Sharma had on his own changed the name from Dowell to Respondent No.2 in the application form. She therefore submits that the employment with Dowell must be combined with his tenure of service with Respondent No.2 in order to calculate whether the petitioner had completed 240 days in service. Apart from this, the learned advocate submits that there is a functional integrality between the two units of Respondent Nos.2 and 3. They are situated in the same place and the petitioner is asked to work for both the concerns. She submits therefore that the combined period of service must be taken into consideration while ascertaining whether the petitioner had completed 240 days. She further submits that if it is held that the petitioner had completed 240 days in service, then he would be entitled to retrenchment compensation and notice of one month or wages in lieu thereof as a condition precedent to terminating his services. She submits that since no chargesheet has been issued to the workman and no misconduct was alleged against him, the termination of his service must be treated as if he was

retrenched, entitling him to one month's notice or wages in lieu thereof and retrenchment compensation. The learned advocate relies on several judgments in *Munshaw Industries Proprietor Texind Corporation Pvt. Ltd. v/s. Employees' State Insurance Corpn,* **2005(3) Bom.C.R. 376;** *Regional Director, ESI Corpn., Madras v/s. Aruna Stores & Anr.,* **2005 (1) CLR 976 MAD**; *Paranjape Metal Shapers Pvt. Ltd. vs. Union of India & Ors.*, **2004(1) LLJ 672 BOM;** *Naraini Udyog & Ors. v/s. Regional Provident Fund Commissioner*, **1996** (SC) GJX **2321 SC;** *Narsayya Sayanna Kunden v/s. Joint Regional Director, ESIC, Pune,* **1994 (2) CLR 492 BOM;** *The Associated Cement Companies Ltd., Chaibassa Cement Works, Jhinkpani v/s. Their Workmen*, **AIR 1960 (47) SC 56** in support of her contention that the workman was entitled to relief as there was functional integrality between the two units.

7. The learned advocate for Respondent No.2 submits that the allegation that the petitioner was working with Dowell and then with Respondent No.2 is not borne out from the pleadings in the statement of claim. He submits that when there are no pleadings to that effect, no amount of evidence would substitute such pleadings. The learned advocate submits that the Reference itself was only against Respondent No.2 and not against Dowell and, therefore, Dowell had no opportunity to contest the claim of the petitioner. He submits that since there are no pleadings on record, the Labour Court has rightly

rejected the contention of the petitioner that there were functional integrality between Dowell and Ideal. Apart from this, the learned Advocate points out that the petitioner was working as a probationer and had not completed 240 days in service and, therefore, was not entitled to the relief claimed. Respondent No.2 has filed an affidavit of one of its partners annexing the petitioner's application for employment. The learned advocate points out that this application does not indicate that the petitioner was ever employed with Dowell. He also brings to my notice clause II(8) of the appointment letter wherein the candidate has been asked to specify whether he had ever been interviewed in the past for employment with the company or its sister concerns and the petitioner had answered in the negative. He also points out that on 10.6.1987, an appointment order was issued by Respondent No.2 informing the petitioner that he would be on probation for six months from the date of joining. The learned advocate points out that after the expiry of six months, Respondent No.2 did not confirm the petitioner in service nor did it extend the period of probation and it is on account of efflux of time that the services of the petitioner had come to an end. The learned advocate further points out that Respondent No.2 partnership firm has been dissolved w.e.f. 26.11.2006 and, therefore, no relief can be granted in such circumstances to the petitioner.

8. In my view, the Labour Court cannot be faulted for having dismissed the Reference. There is not even a whisper in the statement of claim that the petitioner had worked in Dowell prior to his employment with Respondent No.2 and that his services with Dowell should be treated as continuous with his employment in Respondent No.2 in order to compute whether the petitioner had completed 240 days in service. There is no pleading at all in the statement of claim that the petitioner had applied for employment with Dowell and that the name of the prospective employer in his application had been changed to Respondent No.2. The submissions of the learned advocate for the petitioner who has relied on the judgments in *Ram Sarup Gupta & Ors. v/s. Bishun Narain Inter College and Ors.,* **1987 (2) SCC 555 SC;** *Bhagwati Prasad v/s. Shri Chandramaul,* **1966 (2) SCR 286 SC;** *Oriental Insurance Co. Ltd. v/s. Sunderbai & Anr.*, **1998 (1) LLJ 37 MP;** *Himanshu Sekhar Sharma v/s. Presiding Officer, Labour Court & Ors.*, **1994(1) LLJ 1124 ORI** to submit that pleadings should be liberally construed, though correct, cannot be accepted in the present case. There is no doubt that technical pleas should not be a hurdle in granting relief under welfare legislation. However, in the present case, when the foundation of the petitioner’s contention is based on whether he had completed 240 days in service there must be some pleading to the effect that he had worked

with the sister concern of Respondent No.2 and that his name was included on the muster roll of Respondent No.2 only by way of subterfuge. When this basic pleading is absent, it is extremely difficult to consider the evidence on record although strict rules of pleadings may not apply to labour litigation. In the present case, the petitioner has not sought a reference against Dowell at all nor has the petitioner asked for a corrigendum to be issued to make Dowell a party to the Reference. In such circumstances, it is difficult to uphold the contention of the learned advocate for the petitioner. It is well settled that no amount of evidence can take the place of the pleadings. The evidence must be founded on the pleadings so that the contesting party is not taken unawares by the evidence.

9. In the present case, the appointment letter indicates that the petitioner was appointed on probation for six months after the expiry of his period of probation his services came to an end as Respondent No.2 did not extend the probation period nor did it confirm the petitioner in service. Admittedly, the petitioner could not have completed 240 days in service from the date of his appointment with Respondent No.2 on 10.6.1987 till his services came to am end on 31.12.1987.

10. In this view of the matter, the petition fails.

Rule discharged. No costs.